



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2982



Charles Whitehead
33 Underwood Road
Hubbardston MA 01452

Re: Cornish Logging Violation

ADMINISTRATIVE ORDER

No. WD 02-09

February 20, 2002

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Charles Whitehead pursuant to RSA 485-A:17. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Charles Whitehead is an individual having a mailing address of 33 Underwood Road, Hubbardston, MA 01452.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain, erosion control and timber harvesting through a permit program. Pursuant to RSA 485-A:6, VIII, the Commissioner of DES has adopted Env-Ws 415 to implement this program.
2. Pursuant to RSA 485-A:17, III and Env-Ws 415.04, timber harvesting permits are granted by completing the New Hampshire Department of Revenue Administration's Intent to Cut form
3. RSA 227-J:7, the forest management statute, states that "[p]ursuant to RSA 485-A:17, any person proposing to dredge, excavate, place fill, mine, transport forest products, or undertake construction in or on the border of surface waters of the state, and any person proposing to significantly alter the characteristics of the terrain, in such a manner as to impede the natural runoff or create unnatural runoff may result in penalties under RSA 485-A."
4. Charles Whitehead is the owner of land located in the town of Cornish, more particularly identified in the Town of Cornish tax maps as Tax Map 3, Lot 29 (the "Property").
5. On January 2, 2000 Charles Whitehead signed a Notice of Intent to Cut Wood or Timber ("Intent to Cut") for timber harvesting activities to occur on the Property. The Intent to Cut was

filed with the Town of Cornish. The Notice identified Andrew Pysz as the logger for the forestry operations to be performed on the Property.

6. Pursuant to Env-Ws 415.04, when Mr. Whitehead executed the Intent to Cut form, he agreed that the forest management activities on the Property would be in accordance with the proper methods of controlling and dispersing water on truck roads, skid trails and log landings set forth in the manual *Best Management Practices for Erosion Control on Timber Harvest Operations in New Hampshire* ("BMP").

7. The BMP includes the following relevant erosion control provisions:

"Skid Trails: A well thought out efficient transportation system will minimize the area disturbed and vulnerable to erosion. Trail grades should be kept to 15% or less. Steeper grades are permissible for shorter distances. Move surface water quickly off trail surfaces and on to undisturbed forest floor." BMP pp.16-17.

"Cross Drainage Culverts: When constructing roads on side hill locations, ditch the uphill side of the roadway to intercept surface runoff...When harvesting operation has been completed, the road should be stabilized by installing water bars and removing all pipe culverts from truck roads which will not be maintained." BMP pp. 26-27.

"Water Bars: To intercept and divert water from side ditches and truck road or skid trail surfaces, minimizing erosion by decreasing the slope length of surface water flow." BMP p. 23.

"Haul Road, Skid Trail and Log Landing Stabilization: Old or new water diversion structures such as water bars, culverts, broad based dips, etc., must be operative before stabilization is initiated. Where feasible, prepare a seedbed by grading, removing debris, and scarifying the soil to a minimum depth of 3 inches. When the area to be seeded has been recently loosened to the extent that an adequate seedbed exists, no additional treatment is required...Inspect all seeded areas for failures to make necessary repairs...Grasses and other herbaceous cover can stabilize bare mineral soil and minimize erosion. It is a good practice to seed disturbed areas following harvesting...Mulch seedings and anchor on slopes or where subjected to concentrated flow. Track in seed with a dozer whenever possible to improve germination and establishment, especially when seeding flatpea or crownvetch and on sandy, droughty sites." BMP pp.45-46.

8. On March 14, 2000, Douglas Miner, Forest Ranger for the Department of Resources and Economic Development ("DRED"), issued an Official Notice to Andrew Pysz. The Specific Violation alleged in the Official Notice was as follows: "Failure to comply with [the BMP]." The Required Action in the Official Notice was to "[i]ninstall siltation and erosion control devices on steep grades to control erosion and eliminate water quality problems." The Required Action was to be completed by March 17, 2000.

9. On March 15, 2000, DES personnel conducted an inspection of the Property. During the inspection, DES personnel observed that a logging road had been constructed on the Property on a slope that exceeded 15% grade. Inadequate erosion control measures had been employed to control erosion and sediment flow from the logging operation.

10. On April 13, 2000, DES personnel conducted a second inspection of the Property.

During the inspection, the following was observed:

- a. Significant sediment flow was observed flowing down the main skid trail. Sediment was measured to be as much as a foot depth at the bottom of the skid trail.
- b. No erosion or sediment control measures were in place at the time of the inspection.
- c. A borrow pit was observed on the Property. Deep gullies and rills were observed along the road leading to the borrow pit. Hay bales and a silt fence were observed along the borrow pit road, but measures were inadequate to control erosion and sediment flow.
- d. Gullies and rills were observed as long as 300 feet and 18 inches of average depth along the main skid trail.
- e. To the south of the landing area, a depression in the skid trail was filled with approximately 18 inches of sediment. Sediment was observed flowing over the top of a silt fence at this location.

11. On October 24, 2000, personnel from DES conducted a third inspection of the Property. During the inspection the following were observed:

- a. Logging operations had been completed.
- b. A logging road extended from Route 12A to approximately half-way up the slope and then branched off into several skidder trails.
- c. The Property generally sloped steeply toward Route 12A. Slopes exceeded the preferred grade of skid trails of 3-5% grade. Portions of the main skid road exceeded 40% grade.
- d. Sediment from the forestry operations on the Property was observed at the entrance to the Property and in the roadside swales and culverts along Route 12A.
- e. Numerous gullies, up to 4 feet in depth, caused by inadequate erosion control measures by loggers on the Property, were observed on the Property off the main logging road.
- f. A borrow pit, approximately 100 feet by 50 feet, used during forestry operations was observed on the Property. A silt fence was located approximately 20 feet downhill from the edge of the borrow pit. The sides of the pit were unstable and heavily eroded, and sediment was observed sloughing off the sides of the pit toward the silt fence. The silt fence had not been maintained and sediment overflowed the top of the fence.
- g. A culvert had been installed beneath the main logging road approximately half-way between Route 12A and the top of the logging road. The culvert was half full of sediment from material flowing from the side of the hill as a result of logging operations.
- h. No water bars were observed on the steep logging road.

- i. No check dams were observed in the drainage channels adjacent to the logging road.
 - j. Erosion and siltation controls had not been adequately deployed resulting in significant erosion and sediment flow throughout the Property.
 - k. The hydrology of the site has been altered by the construction of the logging road. There were seepage outbreaks on the slopes as a result of the altered terrain.
 - l. The logging roads were not constructed according to Best Management Practices. The logging road was not back-dragged, and site was not seeded or mulched and tracked when the logging operation was completed.
12. On October 26, 2000, DES issued Letter of Deficiency WD WQE 00-20(the "LOD") to Andrew Pysz, and copied Charles Whitehead. Neither Charles Whitehead nor Andrew Pysz have responded to the LOD.
13. On January 31, 2002, DES personnel conducted a follow-up inspection of the Property. At that time DES personnel observed that the deficiencies noted during previous inspections had not been addressed.

D. DETERMINATION OF VIOLATIONS

1. Charles Whitehead has violated RSA 485-A:17 by failing to comply with the BMP, specifically by:
- a. Constructing a haul road or skid trail on grades steeper than 10% or 15%, respectively;
 - b. constructing roads on side hill locations, without ditching the uphill side of the roadway to intercept surface runoff;
 - c. failing to divert water away from the road surface and onto undisturbed forest floor by the use of ditches.
 - d. failing to utilize water bars to intercept and divert water from side ditches and truck road or skid trail surfaces;
 - e. failing to stabilize haul roads and skid trails to reduce damage from sediment and runoff;
 - f. failing to seed areas of exposed mineral soil that are subject to erosion and where permanent vegetative cover is needed;
 - g. failing to mulch seedings or anchor on slopes where subjected to concentrated flow;
 - h. failing to track in seed with a dozer whenever possible to improve germination and establishment;
 - i. failing to inspect all seeded areas for failures and make necessary repairs;

- j. failing to install cross drainage culverts to collect and transmit water flows from side ditches and seeps under truck haul roads and major skid trails;
 - k. failing to install culverts at appropriate intervals according to grade;
 - l. failing to stabilize roads when harvesting operation was completed, by installing water bars and removing all pipe culverts from truck roads that will not be maintained.
2. Charles Whitehead has violated RSA 485-A:17 by failing to install erosion control measures during forest management activities on the Property.

E. ORDER

Based on the above findings, DES hereby orders Charles Whitehead as follows

1. Within 30 days of the date of this Order, submit a restoration and erosion and sediment control plan, prepared by an engineer licensed in the State of New Hampshire, to DES for review. Include in the plan a schedule for implementing the measure called for in the plan. The restoration plan should include at a minimum the following:
 - a. A plan with dimensions, drawn to scale, showing:
 1. existing conditions; and
 2. proposed conditions after reestablishing the area damaged by logging operations;
 - b. A detailed description of the proposed means of temporary and permanent erosion control (silt fence, hay bales, etc.) and stabilization of the restoration area;
 - c. A detailed description of the proposed means of restoring the topography of the area damaged by logging operations;
 - d. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration area, including a description of species to be planted, and the distribution of vegetation;
 - e. A description of the proposed construction sequence, equipment, methods for accomplishing restoration and anticipated restoration compliance date; and
 - f. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at minimum monitoring progress reports for two successive growing seasons following completion of the restoration project.
2. Implement the restoration and erosion and sediment control plan at the Property, as approved by DES, in accordance with the approved schedule.
3. Send the proposed plan and other correspondence in connection with this Administrative Order, **other than appeals**, to DES as follows:

Ana Ford, Site Specific Program
DES Water Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-3380
e-mail: aford@des.state.nh.us

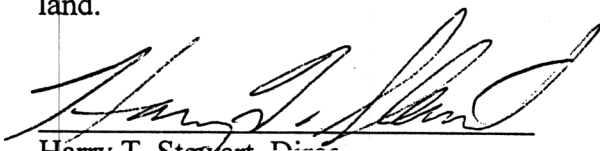
F. APPEAL

Any person aggrieved by this Order may appeal the Order to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Charles Whitehead of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485-A:22 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Charles Whitehead remains obligated to comply with all applicable requirements, in particular restoration of the Property. DES will continue to monitor Charles Whitehead's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Sullivan County Registry of Deeds so as to run with the land.


Harry T. Stewart,
Water Division


George Dana Bisbee, Assistant Commissioner

Certified Mail # 7099 3400 0002 9774 8166

cc: Gretchen Rule, DES Enforcement Coordinator
Public Information Officer, DES PIP Office
Sullivan County Registry of Deeds
MaryAnn Tilton, WWT/WD/DES
Cornish Board of Selectmen
Cornish Conservation Commission
DRED, Division of Forests and Lands